

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2622 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DILIP M PATEL

ADVANCE CHEMICALS

Versus

MUNICIPAL COMMISSIONER OF THE MUNI. COPR. OF AHMEDABAD

Appearance:

1. First Appeal No. 2622 of 2002
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
MR MG NAGARKAR for Respondent No. 1
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CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard.

2. Admit.

3. Mr.M.G.Nagarkar, learned advocate waives service and accept notice of admission on behalf of respondent Municipal Corporation.

4. This appeal is taken up today for final disposal on the joint request by learned advocates appearing for the parties.

5. It is submitted by Mr.P.V.Nanavaty, learned advocate for the appellant that the amount demanded by the respondent - Corporation was deposited within the stipulated period but, the appellant failed to produce the receipt thereof. Consequently, the Municipal Valuation Appeal under Section 406 of the Bombay Provincial Municipal Corporation Act, came to be dismissed by the Small Causes Court, Ahmedabad.

6. It is not disputed that against GRV fixed by the respondent - Corporation, the assessee - present appellant filed appeal being M.V.Appeal No.5151 of 1998 under Section 406 of the Act. In the said appeal, interim application at Exh.5 came to be filed by the appellant, praying for the stay of the operation of the order fixing GRV by the respondent Corporation which was challenged in the appeal before the Small Causes Court, Ahmedabad. The Small Causes Court directed the appellant to deposit Rs.8000/- within one month of 21.12.1999 towards the dues. The appellant admittedly deposited the said amount within one month but, did not produce the copy of the receipt suggesting the deposit of the required amount.

7. Mr. M.G.Nagarkar, learned advocate for the respondent - Corporation does not dispute the factum of deposit of amount required vide order dated 21.12.1999, below Exh.5, by which the stay of the execution of the order fixing GRV was came to be granted.

Thus, it will be seen that the amount of Rs.8000/- has been deposited within one month of the order dated 21.12.1999 passed by the Small Causes Court.

8. It is also not disputed that despite the deposit

of the amount on 17.1.2000 pursuant to the order dated 21.12.1999, the appellant failed to produce copy of the receipt suggesting the deposit of the amount pursuant to the order dated 21.12.1999.

8. Along with the appeal memo, vide Annexure-A, copy of the receipt dated 17.1.2000 has been produced by the appellant. Thus, it will be seen that the order dated 21.12.1999 has been complied with but, the receipt suggesting the deposit of the amount pursuant thereto was not produced on the record which resulted into to the dismissal of the M.V.Appeal No.5151 of 1998.

Since the amount has been deposited within the period of one month granted vide order dated 21.12.1999, below Exh.5 and failure to produce the copy of the receipt suggesting the deposit in compliance with the order dated 21.12.1999 led to the dismissal of appeal, we are inclined to set aside the impugned order dated 25.11.2002 whereby the M.V.Appeal No.5151 of 1998 came to be dismissed, and remand the matter to Small Causes Court, Ahmedabad for disposal of M.V.Appeal No.5151 of 1998 a fresh on merits, considering the compliance with the order dated 21.12.1999 below Exh.5 by the appellant.

9. In the result, appeal is allowed. The impugned order dated 25.11.2002 is set aside. The M.V.Appeal No.5151 of 1998 is remanded to the Small Causes Court, Ahmedabad for decision on merits in accordance with law. No order to cost.

(N.G.Nandi, J.)

(D.A.Mehta, J.)

(vipul)